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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,033	03/05/2002	Mary Ziping Luo	PLI-980	3879
24984	7590	12/15/2003	EXAMINER	
ALBERT O COTA 5460 WHITE OAK AVE SUITE A-331 ENCINO, CA 91316			MOHANDESI, JILA M	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 12/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,033

Applicant(s)

LUO ET AL.

Examiner

Jila M Mohandesi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 26-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species I, directed to a glass bottle protective enclosure as shown in Figures 1-8.

Species II, as directed to a glass bottle protective enclosure as shown in Figures 9-10.

2. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims appear to be generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record

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showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. During a telephone conversation with Applicant's attorney Mr. Alberto Cota on December 10, 2003 a provisional election was made with traverse to prosecute the invention of Species I, claims 1-25. Affirmation of this election must be made by applicant in replying to this Office action. Claims 26-29 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear whether the applicant intends to claim the combination of a glass bottle protective enclosure (GBPE) and a glass bottle or is claiming the subcombination of a GBPE for use with a bottle. This is because in many instances claims which appear to be drawn only to the subcombination of GBPE (no glass bottle has been claimed), are further structurally limited with reference to the glass bottle. For example only, claims 1 and 12, lines 1 and 2 appears to clearly indicate that no glass bottle are

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claimed (the claim is drawn to a GBPE adapted for use with a glass bottle). On the other hand claims 1, 12, 2, 3, 7 and 16-17 recite limitations, which are dependent on the size of the glass bottle. All of the claims should be reviewed for this type of error. In this office action all references in the claims to a glass bottle where they are not expressly recited in combination with the claimed GBPE are not considered to be further structurally limiting with respect to the GBPE. The examiner will treat such references to the glass bottle as merely the applicant's statements of intended use of the GBPE in order to give the claims their broadest reasonable interpretation pursuant to PTO practice. On the other hand clarification of the scope of the above noted claims is required in response to this office action.

Claim 3 recites the limitation "the medication labels" in lines 3 and 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation "the upper terminus and the lower terminus" in lines 5 and 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 17 recites the limitation "the medication label" in lines 3 and 4. There is insufficient antecedent basis for this limitation in the claim.

The above noted defects are merely representative and are in no way to be considered to be a complete listing thereof.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Jamison et al. (2,480,247). Jamison '247 discloses a glass bottle protective enclosure adapted for use with a glass bottle comprising a lower section having a shoulder and a bottle neck with an upper opening, and a bottle cap designed to be securely attached over the upper opening of the bottle neck, said glass bottle protective enclosure comprising: a base (14) with a lower surface and an upper surface, an integral side wall extending upward from said base and having an outer surface, an inner surface and an upper terminus that terminates adjacent the shoulder of the glass bottles, a plurality of shock absorbing protrusions (cushioning rings 16) projecting outward from the upper surface of said base and from the inner surface of said sidewall, a bottle container cap (32) having: a lower terminus having means for being securely attached to the upper terminus of said side wall. The means for attaching said bottle container cap to said lower bottle container comprises: the upper terminus of said integral side wall having a set of external threads, and the lower terminus of said cap having a set of internal threads dimensioned to interface with the external threads on said integral side wall, wherein when the two threads are threaded, a tight leak-proof seal is provided. See Figure 1 and column 2, lines 33-35.

The glass bottle of Jamison '247 is inherently capable of storing a toxic injectable medication.

8. Claims 1-7, 12, 16, 17, 18 and 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Schroeder, Jr. et al. (4,300,612). Schroeder '612 discloses a glass

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bottle protective enclosure adapted for use with a glass bottle of toxic material said glass bottle protective enclosure comprising: a lower bottle container (20) having an integral side wall and a base, a lower bottle-container cap (1) having means for being attached to said lower bottle container, and means for protecting (stubs/nodular protrusions 24 and stubs/ribs or corrugations 3a) the glass bottle contained within said protective enclosure from a shock impact. The means for attaching said lower bottle-container cap to said lower bottle container comprises: the upper terminus of said integral side wall having a set of external threads, and the lower terminus of said cap having a set of internal threads dimensioned to interface with the external threads on said integral side wall, wherein when the two threads are threaded, a tight leak-proof seal is provided. See Figure 1 embodiment.

With respect to claims 3 and 17-18, the lower container is constructed of transparent plastic which allows the medication labels on the glass bottle to be visible through the lower container and wherein said bottle container cap is also constructed of plastic. See column 2, lines 55-65.

With respect to claim 12, note the set of shock absorbing protrusions (stubs/ribs or corrugations 3a) which will inherently interface with the bottle cap.

9. Claims 1-2, 12, 16 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Maloney, Jr. (4,114,759). Maloney '759 discloses a glass bottle protective enclosure adapted for use with a bottle said bottle protective enclosure comprising: a lower bottle container having an integral side wall and a base, a lower bottle-container cap having means for being attached to said lower bottle container, and

means for protecting (rigid collar 17) the bottle contained within said protective enclosure from a shock impact. The means for attaching said lower bottle-container cap to said lower bottle container comprises: a male detent that accepts a tight-fitting female detent on said lower container cap. See Figure 2 embodiment and column 5, lines 32-37.

Maloney '759 discloses a bottle protective enclosure for protecting a variety of different elongated regular object having peripheral shape of a cylinder, ellipse or higher polygon. The protective enclosure being particularly effective enclosure for bottles. The glass bottle of Maloney '759 is inherently capable of storing a toxic injectable medication.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 12, 16 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jamison '247 in view of Velasco '541. Jamison '247 as described above discloses all the limitations of the claims except for having a set of shock absorbing protrusions positioned to interface with the bottle cap. Maloney '759 discloses a set of protrusions (rigid collar 17) positioned to interface with the bottle cap to provide better protection for the bottle. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a absorbing protrusions

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positioned to interface with the bottle cap in the container of Jamison '247 as taught by Maloney '759 for added protection.

With respect to claim 20, whether the shock protrusions are continuous or discontinuous rings are a design choice depending on the amount of protection needed.

12. Claims 8 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder '612 in view of Burdick (9,695,090). Schroeder '612 as described above discloses all the limitations of the claims except for the container being constructed from color-tinted plastic. Burdick '090 discloses that it is desirable to make containers from color-tinted plastics to prevent light from penetrating the medicine bottle. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the container of Schroeder '612 from color-tinted plastics as taught by Burdick '090 to prevent light from penetrating the bottle.

13. Claims 9, 11, 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder '612 in view of Tryba (6,112,579). Schroeder '612 as described above discloses all the limitations of the claims except for the container having a sensor cavity into which is inserted audible signal leakage sensor. Tryba '579 discloses providing a fluid leakage sensing apparatus, which senses the leakage of a fluid contained in an inner member to an outer container by activating an audio signal. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a audible leakage sensor to the container of Schroeder '612 as taught by Tryba '579 for detecting leakage within the container.

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14. Claims 9-10 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder '612 in view of Velasco et al. (4,813,514). Schroeder '612 as described above discloses all the limitations of the claims except for the container having a sensor cavity into which is inserted a visible color change leakage sensor. Velasco '541 discloses leakage sensor, which senses the leakage of a fluid contained in an container that sustains a first color when in a first equilibrium and a second color when in second equilibrium. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a visible color change leakage sensor to the container of Schroeder '612 as taught by Velasco '514 for detecting leakage within the container.

15. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder '612 in view of Miller et al. (5,860,550). Schroeder '612 as described above discloses all the limitations of the claims except for a shrink wrap encompassing the container. Miller '550 discloses that it is desirable to shrink wrap containers to protect the container from tampering or aging. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a shrink wrap to the container of Schroeder '612 as taught by Miller '550 to protect the container from tampering or aging.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are bottle protective enclosures analogous to applicant's invention.

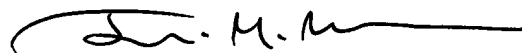
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17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M Mohandesi whose telephone number is (703) 305-7015. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (703) 308-2672. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

**JILA M. MOHANDESI
PRIMARY EXAMINER**



Jila M Mohandesi
Primary Examiner
Art Unit 3728

JMM
December 10, 2003